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RECENT DECISIONS

ARMY AND NAVY—ERRONEOUS SENTENCE—DISCHARGE TERMINATES SERVICE.—The relator was given a bad-conduct discharge from the United States Navy pursuant to the sentence of a summary court-martial. Later the Secretary of the Navy disapproved this sentence, and the relator was ordered to report back to the Navy. He obeyed under protest. Thereafter, he returned home on leave and refused to return. He was arrested, declared a deserter and was about to be tried as such. On application for a writ of *habeas corpus*, it was held that the Navy Department had no jurisdiction over him. *Ex parte Harris* (D. C. 1920) 268 Fed. 911.

The decision in the principal case seems clearly correct. The relator was discharged, under authority of (1909) 35 Stat. 623, U. S. Comp. Stat. (1916) § 3022, by officers acting pursuant to the sentence of a summary court of competent jurisdiction. The effect was to change his status from that of a sailor to that of a civilian. The jurisdiction of the Navy Department could be restored only by re-enlistment. A similar result has been reached in the Army without the aid of the federal courts. (1912) Dig. Op. J. A. G. Army 456. The Attorney General was also of this opinion. *Case of Lieut. Helms* (1869) 12 Op. Att. Gen. 16. The effect of the rule is, apparently, that where an enlisted man has been dishonorably discharged, as in the instant case, there is no possibility of removing the stain upon his reputation except by Act of Congress or by re-enlistment with subsequent honorable discharge. See (1912) Dig. Op. J. A. G. Army 456.

BAILMENTS—LIABILITY OF BAILEE FOR HIRE AND GRATUITOUS BAILEE COMPARED—NEGLIGENCE.—The plaintiff sent a number of pelts to the defendant, a habitmaker, to be made into a coat. Upon its completion, the plaintiff was notified and instructions regarding its disposal requested. The plaintiff replied that she would call for it. The coat was placed each day in an unlocked show-case in the defendant's show-room. Subsequently, two unknown women entered the defendant's store, induced the only clerk there to leave the room by a common pretext, and stole the coat. They were convicted of larceny, but the coat was never found. *Held*, since the defendant was a bailee for reward, and was negligent, the plaintiff might recover the value of the pelts. But a stay of execution was granted on the theory that if, on appeal, the defendant should be declared a gratuitous bailee, he would not be liable. *Mitchell v. Davis* (K. B. 1920) 37 T. L. R. 68.

A gratuitous bailee is liable only for gross negligence. *Giblin v. McMullen* (1869) L. R. 2 P. C. 317; *Scott v. Nat. Bank of Chester Valley* (Pa. Sup. Ct. 1874) 10 Can. L. J., N. S., 182; see *First Nat. Bank v. Ocean Nat. Bank* (1875) 60 N. Y. 278, 295; (1916) 16 COLUMBIA LAW REV. 66. The usual definition of "gross negligence," in this class of cases, is want of that care which a reasonably prudent man would use in keeping his own property of like nature. *Bullen v. Swan Elec. Engraving Co.* (K. B. 1906) 22 T. L. R. 275; *Wiehe v. Dennis Bros.* (K. B. 1913) 29 T. L. R. 250; *Giblin v. McMullen, supra*. In a bailment for mutual benefit, *locatio operis faciendi*, the bailee must exercise ordinary and reasonable care. *Perera v. Panama, etc. Co.* (1918) 179 Cal. 63, 175 Pac. 454; *Grant v. Müller* (1916) 159 N. Y. Supp. 829. This degree of care is also defined as that which a man takes of his own goods. *Finucane v. Small* (1795) 1 Esp. 315. In either case, the bailee is excused if he can show absence of negligence on his part. *Powell v. Graves & Co.* (Q. B. 1886) 2 T. L. R. 663; (1913) 13 COLUMBIA LAW